

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Christopher Mills	Team: Team # 3	CCRB Case #: 201212286	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Monday, 09/17/2012 11:30 PM	Location of Incident: Linden Boulevard and Milford Street	Precinct: 75	18 Mo. SOL 3/17/2014	EO SOL 3/17/2014	
Date/Time CV Reported Tue, 09/18/2012 12:00 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 09/21/2012 12:28 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Sean Downes	03978	918975	PBBN
2. POM Daniel Cosenza	23835	950237	PBBN

Officer(s)	Allegation	Investigator Recommendation
A.SGT Sean Downes	Force: Sgt. Sean Downes used physical force against § 87(2)(b)	
B.SGT Sean Downes	Abuse: Sgt. Sean Downes frisked § 87(2)(b)	
C.POM Daniel Cosenza	Abuse: PO Daniel Cosenza frisked § 87(2)(b)	
D.POM Daniel Cosenza	Abuse: PO Daniel Cosenza searched § 87(2)(b)	
E.SGT Sean Downes	Abuse: Sgt. Sean Downes supervised the search of the vehicle in which § 87(2)(b) was an occupant.	
F.SGT Sean Downes	Abuse: Sgt. Sean Downes threatened to arrest § 87(2)(b)	

Case Summary

On September 17, 2012, § 87(2)(b) filed this complaint with IAB, generating IAB Log number 12-49518.

At approximately 11:30 p.m. on September 17, 2012, Sgt. Sean Downes and PO Daniel Cosenza of Patrol Borough Brooklyn North stopped § 87(2)(b)'s vehicle in the vicinity of Linden Boulevard and Milford Street in Brooklyn. The following allegations resulted:

- **Allegation A – Force: Sgt. Sean Downes used physical force against § 87(2)(b)**
§ 87(2)(g)
- **Allegation B – Abuse of Authority: Sgt. Sean Downes frisked § 87(2)(b)**
- **Allegation C – Abuse of Authority: PO Daniel Cosenza frisked § 87(2)(b)**
§ 87(2)(g)
- **Allegation D – Abuse of Authority: PO Daniel Cosenza searched § 87(2)(b)**
§ 87(2)(g)
- **Allegation E – Abuse of Authority: Sgt. Sean Downes supervised the search of the vehicle in which § 87(2)(b) was an occupant**
§ 87(2)(g)
- **Allegation F – Abuse of Authority: Sgt. Sean Downes threatened to arrest § 87(2)(b)**
§ 87(2)(g)

On October 2, 2012, mediation was presented to § 87(2)(b) who rejected it as an alternative to resolve this complaint.

Results of Investigation

Civilian Statement

Complainant/Victim: § 87(2)(b)

- § 87(2)(b) a § 87(2)(b)

CCRB Testimony

On September 18, 2012, § 87(2)(b) provided a brief statement in his initial IAB complaint (encl. 9). On September 28, 2012, § 87(2)(b) provided a telephone statement (encl. 11a-11b), and on October 11, 2012, § 87(2)(b) was interviewed at the CCRB (encl. 11c-11g). All three statements were generally consistent, with any exceptions noted below. The following is a summary of his statements.

On September 17, 2012, at approximately 11:30 p.m. § 87(2)(b) was driving in the vicinity of Linden Boulevard and Milford Street in Brooklyn. He made a left turn onto Miller Avenue and saw a marked police vehicle heading in the opposite direction. It signaled for him to proceed, but turned around and followed him. Because the police vehicle had followed him, § 87(2)(b)

§ 87(2)(b) was sure to come to a complete stop at all stop signs and always used his turn signal. He had gone through three intersections, stopping at each stop sign, when he put on his turn signal and turned down Milford Street. The police vehicle put its lights on and § 87(2)(b) pulled over.

Two officers, identified via investigation as Sgt. Sean Downes and PO Daniel Cosenza of Patrol Borough Brooklyn North, exited the RMP and approached his vehicle. Sgt. Downes approached his driver's side door, while PO Cosenza approached his passenger's side door.

Sgt. Downes asked § 87(2)(b) where he lived, but when § 87(2)(b) replied that he lived in Long Island, Sgt. Downes told him not to be smart, because Long Island is not an address. § 87(2)(b) explained that he had two homes in different parts of the city, and Sgt. Downes asked to see § 87(2)(b)'s license and registration. § 87(2)(b) did not want to make any sudden or threatening moves, so he asked Sgt. Downes if he could reach into his glove compartment to retrieve the requested items. Sgt. Downes replied by telling § 87(2)(b) to get out of the car, even though at no point in the interaction had § 87(2)(b) made any sudden movements or reached downward. He kept his hands on the steering wheel the entire time, at the sergeant's request.

Neither Sgt. Downes nor PO Cosenza indicated why § 87(2)(b) was being asked to step out of the car, nor did they say anything about hand movements or threatening behavior. § 87(2)(b) exited his vehicle as instructed, without doing anything with his hands and without first retrieving his license and registration. As he exited the vehicle, he kept his hands motionless and turned towards the vehicle, assuming that he was about to be frisked, and attempting to avoid any sudden or threatening gestures. In the process of exiting the vehicle and turning toward it, § 87(2)(b) took approximately two or three steps at an angle away from Sgt. Downes and toward the vehicle. Sgt. Downes kicked his right heel, causing him to stumble towards his vehicle.

§ 87(2)(b) did not think Sgt. Downes intended for him to fall at that point, but may have wanted him to be off balance. However, Sgt. Downes immediately took him down to the ground, by grabbing him around the center of his body, and moving a leg in front of him. § 87(2)(b) broke his fall with his knees, causing bruising and lacerations, photos of which he provided at this point during the interview. The photos had been taken on October 4, 2012. (When § 87(2)(b) presented the photos during his official CCRB statement he stated that the main injury was to his right knee. The injury was still visible in the photos, which had been taken 17 days after the incident. The injury to his left knee had faded.) (encl. 12b-12e) During his phone statement, § 87(2)(b) said that PO Cosenza helped to take him to the ground, but during his CCRB statement, he said that only Sgt. Downes had taken him to the ground. Sgt. Downes did not give any verbal commands before he took § 87(2)(b) down.

PO Cosenza, who was on the passenger side, came around and helped to handcuff § 87(2)(b). § 87(2)(b) was very compliant and did not resist. Sgt. Downes told § 87(2)(b) to get up, and § 87(2)(b) requested assistance. One of the officers helped § 87(2)(b) up and told him to sit on the front of the RMP, which he did.

At some point, either when § 87(2)(b) was on the ground or when he first got up, Sgt. Downes told PO Cosenza to frisk § 87(2)(b). PO Cosenza frisked § 87(2)(b) then searched him. PO Cosenza patted everywhere, including § 87(2)(b)'s crotch. PO Cosenza entered multiple pockets and removed § 87(2)(b)'s keys, business card, approximately 500 to 600 dollars in cash, and wallet. At that point, Sgt. Downes already had § 87(2)(b)'s ID, though § 87(2)(b) was not sure how he obtained it. § 87(2)(b) described the search as being "thorough and professional."

One of the officers asked § 87(2)(b) why he was carrying so much cash, and § 87(2)(b) explained that he did not think it was a lot of cash and that he was returning with it to his place of business. Sgt. Downes gave the money back to § 87(2)(b) then entered and searched § 87(2)(b)'s vehicle.

§ 87(2)(b) requested that PO Cosenza, whom he believed was more professional than Sgt. Downes, perform the search, but PO Cosenza refused, and Sgt. Downes began searching the passenger side of § 87(2)(b)'s vehicle, then searched the back seat of the vehicle as well. § 87(2)(b) could not see if Sgt. Downes entered any pockets or the glove compartment, but when Sgt. Downes came back from the search, he was in possession of § 87(2)(b)'s car registration, which had been in the glove compartment. When § 87(2)(b) returned to the car, the glove compartment door was open.

The officers and § 87(2)(b) had a 10-minute conversation about why the officers had tackled and handcuffed him. § 87(2)(b) was given several answers, including that the officers thought he might run away, and that he moved his hands when he exited the vehicle. Meanwhile, Sgt. Downes asked why § 87(2)(b) had made the officers restrain him. § 87(2)(b) explained that Sgt. Downes had tripped him and that restraining him was unnecessary, since he would not have minded being searched.

At some point during this conversation, Sgt. Downes obtained § 87(2)(b)'s Department of Correction's captain shield. In his phone statement, § 87(2)(b) said that when Sgt. Downes obtained his shield, he asked § 87(2)(b) if he wanted to go to jail, and then apologized, stating that § 87(2)(b) was not the person that Sgt. Downes thought he was. During his CCRB statement, § 87(2)(b) said that Sgt. Downes had stated that if he had seen the shield, he would not have asked § 87(2)(b) to get out of the car. § 87(2)(b) responded to Sgt. Downes that he had never had a chance to speak.

At that point, one of the officers removed the handcuffs, and § 87(2)(b) pulled up his pants legs to reveal bruises on his knees. Sgt. Downes saw them and asked § 87(2)(b) if he was going to claim that he had been injured, adding that if § 87(2)(b) was going to claim injuries, he would have to be arrested. Sgt. Downes repeated that he would have to arrest § 87(2)(b) if he wanted an ambulance. Sgt. Downes then handcuffed § 87(2)(b) and moved him to the back seat of the RMP. Once he had placed § 87(2)(b) in the RMP, Sgt. Downes asked several times whether § 87(2)(b) wanted to go home or to go to jail. § 87(2)(b) responded by asking who Sgt. Downes knew who would want to go to jail. Sgt. Downes told him that if he wanted to go home, he would have to sign a document saying that he had been injured because he was being combative. Sgt. Downes then took the handcuffs off again, and PO Cosenza wrote in his memo book.

Sgt. Downes told § 87(2)(b) to sign what PO Cosenza had written. § 87(2)(b) read it and signed it, after which he was told that he could go home. However, Sgt. Downes said that he had to issue a summons, since he had stopped § 87(2)(b) for over 45 minutes. § 87(2)(b) had not committed any traffic infractions, so he was released with a summons for failure to signal a right turn, even though he had used his turn signal for all the turns he made. However, § 87(2)(b)'s complaint is not about the summons. § 87(2)(b) got back in his car and went home and did not receive medical treatment for the injuries.

The incident lasted around 45 minutes, during which time PO Cosenza was "very personable and professional," though he did not speak much. Sgt. Downes's demeanor, however, was aggressive, and he became friendly only after he discovered § 87(2)(b)'s shield. § 87(2)(b)'s demeanor was friendly and he laughed and smiled throughout the interaction.

NYPD Statements

Subject Officer: SERGEANT SEAN DOWNES

- *Sgt. Sean Downes was § 87(2)(b).*
- *On September 17, 2012, Sgt. Sean Downes was assigned to Impact Zone East, within the confines of the 75th Precinct, with his partner PO Daniel Cosenza. He was assigned to an RMP, and was in uniform. He worked between 7:15 p.m. on September 17, 2012, until 4:13 a.m. on September 18, 2012.*

Memo Book

At 10:20 p.m. Sgt. Downes stopped a 2000 Mercedes Benz, license plate FTG2320, at the intersection of Linden Boulevard and Cleveland Street for failure to signal a turn right from Milford Street onto Linden Boulevard, going westbound. The driver was § 87(2)(b). § 87(2)(b) was combative and noncompliant, and needed to be restrained. § 87(2)(b) was handcuffed, and he suffered minor scratches to his knee as a result. A summons was issued and a Stop, Question, and Frisk report was prepared by PO Cosenza. § 87(2)(b) refused medical attention and was apologetic. (encl. 14a-14b).

CCRB Testimony

On February 8, 2012, Sgt. Sean Downes provided a statement at the CCRB (encl. 15a-15e).

At approximately 11:30 p.m. on September 17, 2012, in the vicinity of Milford Street and Linden Boulevard in Brooklyn, Sgt. Downes and PO Cosenza observed § 87(2)(b)'s vehicle fail to signal a turn. Approximately one to two minutes after observing this violation, the officers pulled him over.

As Sgt. Downes exited the vehicle, he ordered § 87(2)(b) to shut his vehicle off and to place his hands on the steering wheel, but § 87(2)(b) failed to comply with these directives. Sgt. Downes issued these instructions while he was approaching the vehicle from ten feet away, and stated that traffic noises impaired hearing. Sgt. Downes did not know whether PO Cosenza made any statements, and did not remember whether he ever went over the loudspeaker.

As he approached the vehicle, Sgt. Downes observed that § 87(2)(b)'s hands were not on the steering wheel, and that he was reaching all over the car. During his interview, when Sgt. Downes was asked to specify the areas of the car towards which § 87(2)(b) was reaching, he declined to name specific areas, stating instead that § 87(2)(b) reached all over his "lungeable" area, which he defined as all areas that § 87(2)(b)'s hands could reach. (When asked if he could be more specific, Sgt. Downes's legal representative, § 87(2)(b) of the Sergeant's Benevolent Association, interrupted the conversation to state that car stops can be dangerous for police officers.)

Sgt. Downes again ordered § 87(2)(b) to turn the vehicle off and to put his hands on the steering wheel, but § 87(2)(b) ignored him and made a number of statements that indicated to Sgt. Downes that he did not intend to cooperate. However, Sgt. Downes did not remember the content of these statements. Sgt. Downes spoke to § 87(2)(b) approximately six or seven times over the course of approximately two minutes, before § 87(2)(b) placed his hands on the steering wheel. Sgt. Downes then asked him where his information was. § 87(2)(b) responded that it was in the glove compartment, and Sgt. Downes then asked him to retrieve it.

§ 87(2)(b) looked at Sgt. Downes and asked him if he was sure he wanted the information, then began laughing. Sgt. Downes replied that he was sure, and that he was not joking. Instead of reaching towards the glove compartment, which he had previously said contained his information, § 87(2)(b) reached towards the center console.

Sgt. Downes feared that § 87(2)(b) was trying to buy time to reach for a weapon, so he opened the driver's side door and instructed § 87(2)(b) to exit the vehicle. § 87(2)(b) exited the vehicle. Sgt. Downes ordered him to turn and face the vehicle.

As § 87(2)(b) turned towards the vehicle, he thrust his right elbow backwards towards Sgt. Downes' head in a threatening manner. Sgt. Downes blocked the elbow, preventing it from striking his head. Sgt. Downes did not know if § 87(2)(b) was attacking him, so he immediately grabbed § 87(2)(b) in order to avoid fighting near traffic. He wrapped his arms around § 87(2)(b)'s torso and tripped § 87(2)(b) so they both fell to the ground. He did not remember what part of § 87(2)(b)'s body hit the ground first. He then handcuffed § 87(2)(b) who did not struggle, helped him up, and sat him on the bumper of the RMP, in order to get them out of the roadway. Sgt. Downes did not remember where PO Cosenza was up until this point.

Sgt. Downes frisked § 87(2)(b) because he believed, based on his behavior, that § 87(2)(b) possessed a weapon. Sgt. Downes did not find a weapon or any other hard objects or areas of interest. He did not go inside § 87(2)(b)'s pockets. He did not know if PO Cosenza also frisked or searched § 87(2)(b) or if he directed PO Cosenza to do so.

Sgt. Downes explained to § 87(2)(b) why he had been stopped and why he had been handcuffed. § 87(2)(b) disagreed with Sgt. Downes's version of events, stating that he had not committed the traffic violation and that he had been cooperative. § 87(2)(b) denied attempting to elbow him. § 87(2)(b) mentioned that he was a correction officer, so Sgt. Downes asked if he had a firearm. He did not remember what § 87(2)(b) responded. § 87(2)(b) was moved off the bumper and was seated in the RMP, in order to get him off the roadway.

Sgt. Downes had taken § 87(2)(b) to the ground earlier because he thought § 87(2)(b) might have been attempting to elbow him, but he did not charge § 87(2)(b) with assaulting an officer, since he could not determine why § 87(2)(b) had jerked his elbow back. Instead, § 87(2)(b)'s handcuffs were taken off and he was issued a traffic violation summons. Sgt. Downes noticed that § 87(2)(b) had a minor scratch on one of his knees, and asked him if he wanted medical attention. § 87(2)(b) said that he did not need medical attention, and Sgt. Downes offered several times to call an ambulance for § 87(2)(b) to take him to the hospital in the RMP. § 87(2)(b) refused each time, and Sgt. Downes told him to sign PO Cosenza's memo book, verifying that he did not want medical attention. § 87(2)(b) signed it without refusing to do so. Neither officer ever threatened to arrest him if he did not sign it. A Stop, Question, and Frisk report was prepared, and § 87(2)(b) was released.

Though Sgt. Downes initially stated that he never searched § 87(2)(b)'s vehicle, he later admitted searching the vehicle at some point, though he did not remember when. He initially stated that he searched the vehicle because § 87(2)(b) had said that he left his information inside it, but he later stated that he searched the vehicle because he it might contain a weapon. When he searched the vehicle, he entered through the driver's side door and searched inside the lungeable area, but did not open any compartments or search outside of the lungeable area. He did not mention specific locations, but had previously defined the lungeable area as being any area which § 87(2)(b)'s hands could reach from the driver's seat. Sgt. Downes did not know whether PO Cosenza approached or searched the vehicle. He did not recall instructing PO Cosenza to search the vehicle.

Subject Officer: PO DANIEL COSENZA

- *PO Daniel Cosenza was § 87(2)(b).*
- *On September 17, 2012, PO Daniel Cosenza was assigned to Operation Impact Zone East within the confines of the 75th Precinct, and was Sgt. Sean Downes's operator. He was assigned to a marked police vehicle, and was in uniform. He worked from 7:30 p.m. on September 17, 2012, until 4:05 a.m. on September 18, 2012.*

Memo Book

At 10L30 p.m. the officers stopped a car going westbound on Linden Boulevard at the intersection of Linden Boulevard and Cleveland Street, for failure to signal a right to southbound from Milford Street onto westbound Linden Boulevard. A summons for failure to signal a right turn was issued to § 87(2)(b) became combative and was detained. He sustained scrapes to both knees and refused medical attention. A signature and the name § 87(2)(b) appear below in different handwriting (encl. 17a-17f).

Stop, Question, and Frisk Report (encl. 22a-22b)

The report, which was prepared by PO Cosenza, indicates that § 87(2)(b) was stopped, frisked, and searched, and that physical force was used. The circumstances leading to the stop were furtive movements and combativeness. The circumstances leading to the frisk were inappropriate attire, furtive movements, refusal to comply with officer's directions, and suspicion that § 87(2)(b) was reaching for a weapon. The circumstances leading to the search were that § 87(2)(b) told officers that he carried a weapon. T § 87(2)(b)

Summons number § 87(2)(b) (encl. 20a-20b)

PO Daniel Cosenza issued this summons to § 87(2)(b) for failure to signal a right turn southbound from Linden Boulevard onto Milford Street.

CCRB Testimony

On January 3, 2013, PO Daniel Cosenza provided an official statement at the CCRB, which corroborated Sgt. Downes's testimony and provided additional information (encl. 18a-18c).

Sgt. Downes interacted with § 87(2)(b) first, telling him to keep his hands on the steering wheel and then explaining why he was being stopped. § 87(2)(b) reached under his seat, towards his hip, towards the center console where the radio was located, and towards the glove compartment. He was wearing slacks and a shirt, and did not appear intoxicated. During this time, § 87(2)(b) did not appear to PO Cosenza to be reaching for any specific item, and appeared to only be fidgeting, so that his actions were only of significance because his hands were not on the wheel. However, from his training and experiences, PO Cosenza knew that it was possible § 87(2)(b) was reaching for a weapon.

§ 87(2)(b) also became argumentative. Sgt. Downes asked him questions, including questions about where he lived. § 87(2)(b) did not directly answer the questions, and instead began laughing and raising his voice. Sgt. Downes then asked § 87(2)(b) to exit the vehicle, but § 87(2)(b) did not immediately comply. He refused, and mocked Sgt. Downes by asking if Sgt. Downes was certain that he wanted § 87(2)(b) to obey his instructions. This exchange occurred for approximately 90 seconds, during which time Sgt. Downes repeatedly asked § 87(2)(b) to exit the vehicle.

Eventually, § 87(2)(b) stepped out of the vehicle voluntarily, and as soon as he did so, Sgt. Downes placed him in handcuffs. As § 87(2)(b) was exiting the vehicle, PO Cosenza came around the back of the vehicle, so he did not see what happened, but when he arrived, § 87(2)(b) was in handcuffs on the ground.

PO Cosenza helped § 87(2)(b) up and placed him on the bumper of the RMP. § 87(2)(b) stated that he was a retired correction captain and PO Cosenza asked him if he had a weapon. § 87(2)(b) responded that he normally carried a firearm, so PO Cosenza frisked him. He did not specify what areas of § 87(2)(b)'s body he frisked. He did not find anything and again asked § 87(2)(b) if he was carrying his firearm, to which § 87(2)(b) responded, "No, you can check." PO Cosenza reached into § 87(2)(b)'s pockets, but did not find a weapon. Sgt. Downes did not order the frisk or the search, which PO Cosenza performed of his own accord.

After being handcuffed and placed on the RMP's bumper, § 87(2)(b) continued to be argumentative and noncompliant. Sgt. Downes asked him questions about why he was being noncompliant and why he had forced the situation to escalate. PO Cosenza went to the RMP to write the summons, while Sgt. Downes watched § 87(2)(b).

PO Cosenza initially stated that after writing the summons, he gave it to § 87(2)(b) asked him if he needed an ambulance due to injuries to his knees, and then sent § 87(2)(b) on his way, approximately ten minutes after the incident began. He also stated that he never searched § 87(2)(b)'s vehicle. However, he later stated that he had watched § 87(2)(b) while Sgt. Downes went to the vehicle. He did not know what Sgt. Downes was doing at the vehicle, but assumed that he was at least looking in the cabin.

When asked during his statement whether he had also searched the vehicle himself, PO Cosenza admitted, despite his previous statements, that he went over to the vehicle to look for weapons. Since the door was open, he stuck his head inside, and since the console was open, he looked inside that, too. He then checked to make sure the turn signal was working, by flipping it up and down.

PO Cosenza eventually acknowledged that he had placed § 87(2)(b) in the RMP at Sgt. Downes's instruction. Once § 87(2)(b) was inside the RMP, Sgt. Downes talked to him while PO Cosenza waited behind them. Sgt. Downes told PO Cosenza to write a statement in his memo book saying that § 87(2)(b) refused medical attention, and to have § 87(2)(b) sign it. PO Cosenza did so, and § 87(2)(b) asked if he had to sign the memo book. PO Cosenza told him that he did not. § 87(2)(b) then asked if he could read the memo book statement, and PO Cosenza let him read it. § 87(2)(b) then signed it, without protesting or saying anything. Neither Sgt. Downes nor PO Cosenza ever threatened to arrest § 87(2)(b).

After he signed the memo book, § 87(2)(b) was allowed to leave. The officers prepared a Stop, Question, and Frisk Report for the incident.

NYPD Documents

§ 87(2)(b)

■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Status of Civil Proceedings (encl. 28a-28c)

- § 87(2)(b) has not filed a Notice of Claim with the City of New York, with regard to the incident, as of February 12, 2013, which is almost two months past the 90-day filing deadline.

Civilian Criminal History (encl. 25b)

- Office of Court Administration records could not be searched without a New York State identification number for § 87(2)(b)

Civilian CCRB History (encl. 7)

- This is the first CCRB complaint filed by § 87(2)(b)

Subject Officer CCRB History

- Sgt. Sean Downes has been a member of the service for 16 years and there are four substantiated CCRB allegations against him. (encl. 5a-5b)
In case number 200600024, the Board substantiated stop, question, search, and frisk allegations against Sgt. Downes. The Board recommended charges and the NYPD imposed the loss of five vacation days (encl. 6a-6b).
- PO Cosenza has been a member of the service for one year and has no substantiated allegations against him (encl. 6c).

Conclusion

Identification of Subject Officers

Both officers acknowledged interacting with § 87(2)(b)

Investigative Findings and Recommendations:

Allegation A: Force: Sgt. Sean Downes used physical force against § 87(2)(b)

It is undisputed that Sgt. Sean Downes used physical force against § 87(2)(b) by wrapping his arms around § 87(2)(b) and sweeping § 87(2)(b)'s feet from under him, so that they fell to the ground.

However, the sequence of events that led to Sgt. Downes's use of force to restrain § 87(2)(b) was described differently by both parties. Sgt. Downes testified that § 87(2)(b) was uncooperative and suddenly jerked his elbow backwards when he exited the vehicle. § 87(2)(b) testified that he was cooperative and did not make any sudden or threatening movements. PO Cosenza was not a witness to the events immediately preceding the use of force and could not articulate how § 87(2)(b) was brought to the ground and placed in handcuffs.

§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

Allegation B – Abuse of Authority: Sgt. Sean Downes frisked § 87(2)(b)

Allegation C – Abuse of Authority: PO Daniel Cosenza frisked § 87(2)(b)

It is undisputed that both Sgt. Downes and PO Cosenza frisked § 87(2)(b). § 87(2)(b) testified that he was not concerned about the frisk, and PO Cosenza testified that § 87(2)(b) had given permission to check for a weapon. The frisk occurred pursuant to § 87(2)(b)'s detainment and both subject officers stated that § 87(2)(b)'s behavior was indicative of possessing a weapon. Their testimonies were corroborated by the Stop, Question, and Frisk report, which indicated that § 87(2)(b) was stopped, frisked, and searched due to furtive movements, combined with attire that could conceal a weapon, refusal to comply with officers' directives, argumentativeness, and non-compliance, that lead the officers to suspect that he was reaching for a weapon. The report also indicated that § 87(2)(b) was searched because he told an officer that he carried a weapon.

Where a police officer reasonably suspects that a person is armed, the officer may conduct a frisk of that person. People v. De Bour, 40 N.Y.2d 210 (1976) (encl. 2a-2m)

The contents of the Stop, Question, and Frisk report corroborate some of the claims made by the officers and are consistent with § 87(2)(b)'s statement that he informed the officers that he was a § 87(2)(b) § 87(2)(g).

§ 87(2)(g)

Allegation D – Abuse of Authority: PO Daniel Cosenza searched § 87(2)(b)

It is undisputed that PO Cosenza searched § 87(2)(b) by reaching into his pockets and removing items.

An officer may search a person when he has probable cause to believe the person has committed a crime or when a frisk reveals an object which could reasonably be mistaken for a weapon. People v. Hill, 171 A.D.2d 1017 (Apt. Div. 4th Dep't 1999) (encl. 2n-2q) When a person consents to a search, an officer may search the areas where it is objectively reasonable to believe the scope of the person's consent permitted the officer to search. Florida v. Jimeno 500 U.S. 248 (1991) (encl. 5e-5l) Consent to "check" is not consent to search. People v. Hall 35A.D.3d 1171 (2006) (encl. 5a-5d)

PO Cosenza testified that, after frisking § 87(2)(b) he searched § 87(2)(b) for a weapon. He did not do so because of a suspicious item or bulge located during the frisk, but because § 87(2)(b) had mentioned that he usually carried a weapon. § 87(2)(b) told PO Cosenza that he could check for a weapon, but did not explicitly consent to a search.

§ 87(2)(g)

Allegation E: Abuse of Authority: Sgt. Sean Downes searched § 87(2)(b)'s vehicle

It is undisputed that Sgt. Downes searched § 87(2)(b)'s vehicle. However, it is disputed whether or not Sgt. Downes had probable cause to search the vehicle. Sgt. Downes and PO Cosenza alleged that § 87(2)(b) reached around his vehicle and refused to place his hands on the steering wheel. PO Cosenza also alleged that § 87(2)(b) stated that he usually carried a weapon. § 87(2)(b) contended that he was cooperative and kept his hands on the wheel.

Both officers testified that § 87(2)(b) had reached around his vehicle, and both testified that § 87(2)(b)'s behavior was indicative of reaching for a weapon. Furthermore, PO Cosenza testified that § 87(2)(b) stated that he usually carried a firearm. Sgt. Downes also testified that he entered § 87(2)(b)'s vehicle in order to retrieve § 87(2)(b)'s registration, which § 87(2)(b) could not retrieve himself, since he was in custody. However, § 87(2)(b) testified that he was cooperative during the entire incident, and that he had kept his hands on the wheel while in the vehicle.

Due to conflicting statements, the investigation could not determine whether Sgt. Downes had justification to search § 87(2)(b)'s vehicle. Therefore, it is recommended that Allegation E be closed as **unsubstantiated**.

Allegation F: Abuse of Authority: Sgt. Sean Downes threatened to arrest § 87(2)(b)

It is disputed whether Sgt. Downes threatened to arrest § 87(2)(b) if he did not sign the memo book. § 87(2)(b) alleged that Sgt. Downes told him that he would be arrested if he

did not sign the memo book, whereas Sgt. Downes and PO Cosenza contended that § 87(2)(b) signed the memo book without being threatened with arrest.

§ 87(2)(g)

Team: _____

Investigator:	_____	_____	_____
	Signature	Print	Date

Supervisor:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date